

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

AIR ST. THOMAS

FAA Order No. 98-13

Served: June 16, 1998

Docket No. CP97SO0007

ORDER DENYING RECONSIDERATION

This case involves an allegation that Respondent Air St. Thomas operated an aircraft in air carrier service on approximately 560 flights with deactivated and partially dismantled carburetor heat systems on both engines. After Air St. Thomas failed to file both an answer to the complaint and a response to an order to show cause, Chief Administrative Law Judge Roy J. Maurer found Air St. Thomas in default. He dismissed the request for hearing and assessed a civil penalty of \$20,000, as requested in the complaint. The law judge noted that if Air St. Thomas wished to appeal, a written notice of appeal had to be filed within 10 days. Nevertheless, Air St. Thomas did not file its notice of appeal until 100 days later. As a result, Air St. Thomas's appeal was dismissed. In the Matter of Air St. Thomas, FAA Order No. 97-29 (October 1, 1997).

Twelve days later, Air St. Thomas filed a document captioned "Notice of Appeal to Reopen Case," which was construed, in FAA Order No. 97-38, as a petition for reconsideration. In the Matter of Air St. Thomas, FAA Order No. 97-38 (November 17, 1997). In the document, Air St. Thomas argued that a letter it sent on March 14, 1997, to

agency counsel -- but not to the law judge -- requesting dismissal of the complaint constituted its answer to the complaint. However, as noted in FAA Order No. 97-38, before the issue of whether the law judge correctly dismissed the case would be addressed, Air St. Thomas had to demonstrate good cause for its failure to file a timely notice of appeal. In the Matter of Air St. Thomas, FAA Order No. 97-38 at 3-4 (November 17, 1997). In FAA Order No. 97-38, Air St. Thomas was granted the opportunity to file a brief detailing its reasons for failing to file a timely notice of appeal. *Id.* at 5.

The President of Air St. Thomas, Paul Heinze Wikander, has filed a document explaining his company's failure to file a timely notice of appeal as follows:

There was ... some confusion being that there was (sic) several other civil penalties that were dismissed and [when] I looked at the order dismissing request for hearing and assessing civil penalty dated May 29, 1997, I misunderstood and thought that this was dismissing this civil penalty as per my request in my letter of March 14, 1997.

Respondent's Answer to Order Requesting Further Briefing, January 7, 1998.

Mr. Wikander also indicates that he was confused by legal matters, but chose not to hire an attorney because: "I felt so strongly about this case that I thought I would have better use of attorney fees to maintain my aircraft in a safe manner. I did not want to even think of cutting back one cent for the safety of flight."


Air St. Thomas's attempt to show good cause for the untimeliness of its notice of appeal has failed. It is difficult to understand how Mr. Wikander could have thought the case against his company was being dismissed in light of the language used in the law judge's order. Among other things, the law judge stated:

- "Respondent is in default"
- "I, therefore, must dismiss the request for hearing and enter an order assessing civil penalty"
- "Respondent's request for a hearing is therefore dismissed and [an] order is hereby entered assessing a civil penalty of \$20,000.00 as requested in the Complaint."
- "If Respondent wishes to appeal this decision, a written notice of appeal must be filed ... no later than ten (10) days after the service of this decision upon Respondent"

Order Dismissing Request for Hearing and Assessing Civil Penalty, May 29, 1997.¹

THEREFORE, IT IS ORDERED THAT:

Air St. Thomas's petition for reconsideration is denied, and a \$20,000 civil penalty is assessed.²


JANE E. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 11 day of June , 1998.

¹ Mr. Wikander's suggestion that he would have to cut back on safety if he hired counsel raises questions about his company's continued fitness to hold an air carrier certificate. FAA civil penalty proceedings, including the instant case, are an essential part of the FAA's program to ensure aviation safety.

² Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1998).